

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

CAROL PASELK, §
Plaintiff, §
v. § **CASE NO. 6:16-CV-1383-RWS-KNM**
BAYVIEW LOAN SERVICING, LLC §
ET AL. §
Defendants. §

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

The Report and Recommendation of the Magistrate Judge (the “Report,” Docket No. 41), which contains her recommendation regarding Bayview Loan Servicing, LLC, Michael Waldron, All Unidentified Associates, Directors, Managers, Staff, Employees, Members, Supporters and Volunteers, and DOES-100 (“the Bayview Defendants”), Peak Foreclosure Services, Inc., Lilian Solano’s, Jack O’Boyle & Associates, and Jack O’Boyle’s (collectively, “Defendants”) motions to dismiss under Federal Rule of Civil procedure 12(b)(6) (Docket Nos. 6, 15, and 33), has been presented for consideration.

The Magistrate Judge recommended that Plaintiff’s claims against all Defendants be dismissed with prejudice. *Id.* at 1. Specifically, the Magistrate Judge recommended dismissal of Plaintiff’s claims based on *res judicata* and under Rule 12(b)(6). *Id.* at 16. The Magistrate Judge further ordered Plaintiff to seek leave of the Court before filing any lawsuit against the Bayview Defendants, pertaining to the subject Property, in the federal courts of Texas. *Id.*

Plaintiff Carol Paselk has filed Objections to the Report and Recommendation (Docket No. 42), a “Demand for Judicial Notice” (Docket No. 43), a “Notice of Supplemental to Objections,” as well as a Motion for Declaratory Judgment and Relief (Docket No. 46) (collectively, “objections”). The Court construes all four documents as Plaintiff’s objections to the Report. Defendants filed a response to Plaintiff’s Objections (Docket No. 49). Having made a *de novo* review of Plaintiff’s objections to the Report, the Court concludes that the findings and conclusions of the Magistrate Judge are correct and the objections are without merit.

Plaintiff primarily objects that the Magistrate Judge’s Report “should be stricken and declared void for being outside her jurisdiction, as there are no magistrate consent forms signed by all parties in the record.” Docket No. 42 at 4. Under 28 U.S.C. § 636(b)(1)(A)–(B), the Magistrate Judge may set forth proposed findings of fact and recommendations as to the disposition of a motion for failure to state a claim upon which relief can be granted. To the extent Plaintiff objects that Judge Mitchell does not have jurisdiction or authority to issue the Report and Recommendation, this objection is overruled. Plaintiff’s remaining objections that the Magistrate Judge did not perform her duties are unsupported and without merit.

Accordingly, Plaintiff’s objections are **OVERRULED**.

The Court further **ADOPTS** the Magistrate Judge’s Report and Recommendation (Docket No. 41) in its entirety as the findings of this Court.

The Defendants’ motions to dismiss under Rule 12(b)(6) and on the basis of *res judicata* (Docket Nos. 6, 15, and 33) are **GRANTED**, and all of Plaintiff’s claims against all Defendants are **DISMISSED WITH PREJUDICE**. The Court does not reach the issue of dismissal under Section 27.009(a) of the Texas Civil Practice and Remedies Code.

Furthermore, Plaintiff shall seek leave of the Court before filing any lawsuit pertaining to the subject of Property against the Bayview Defendants in the federal courts of Texas.

It is further **ORDERED** that any and all motions not previously ruled on are **DENIED**.

SIGNED this 27th day of September, 2017.

Robert W. Schroeder III
ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE